

**ADDITIONAL
EXPERT REPORT**

BY

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Prepared for

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Introduction and personal circumstances

1. This additional expert report builds on my expert report dated September 19th, 2014 [hereafter: "the expert report"]. Since I submitted the expert report, almost nine months have passed.

I am still an advisor international crimes to the National Public Prosecution Authorities, the NPPA, in Rwanda, advising on their transfer genocide cases. Generally, the circumstances of my position and work, as described in detail in the expert report, have not changed.

2. Regarding my responsibilities outside the scope of my official work, I have assumed a position in a Panel of Experts for a research project, conducted by two non-governmental organizations: International Corporate Accountability Roundtable, ICAR, and Amnesty International, AI. The topic of the research is to find an answer to the question why there are so few prosecutions of corporations for international crimes or any other serious human right abuse.

Secondly, I have conducted a two-day seminar for students in the Master International Crimes at the *Vrije Universiteit* in Amsterdam on the topic "*Truth finding in international crimes*" in April 2015. For the seminar I drafted a course book.

3. During the eleven months of my tenure at the NPPA in Kigali, Rwanda, I have almost exclusively focused my attention on the work conducted in the Genocide Fugitive Tracking Unit, the GFTU, in the NPPA. From September 2014 onwards I have studied and analyzed the work processes in and in relation to the GFTU and produced an extensive analysis recorded in an assessment report, which I finalized in December 2014. I have presented these findings to the Prosecutor-General and the Minister of Justice in Rwanda. Based on this analysis and my recommendations in the assessment report, I have advised the GFTU/NPPA on a number of selected topics in 2015. Except from a few issues, analyzed in the assessment report, which I will reference hereunder, this report has, in my opinion, no relevance for the topics addressed in the expert report.

4. For the purpose of the study of the work processes of the GFTU and the drafting of the assessment report, I have interviewed around 40 staff members from various organizations, including all the members of the GFTU. I also reviewed a number of documents relevant for the study and examined various websites.

5. Moreover, I have attended a number of court proceedings in the transfer cases, notably the cases against Uwinkindi, Munyagishari, Mbarushimana, Bandora and Mugesera. I

have not logged each court session individually, but it is fair to say that I have attended at least a dozen trial sessions.

6. As I have been integrated in the NPPA from the beginning, I have attended a few conferences of the NPPA as well as the regular weekly meetings of the GFTU.
7. For my work, I also maintain regular contacts with some of the staff in the Ministry of Justice. To analyze the situation of the defence attorneys I have spoken to staff in the Rwanda Bar Association, RBA, individual defence attorneys and the Director of the Legal Aid Forum in Rwanda.

Purpose of this additional report

8. The purpose of this additional report is to provide an update on my expert opinion on the critical topics addressed in the expert report. Additionally, I wish to provide expert opinion on the status and work of the defence attorneys in the genocide transfer cases, currently adjudicated before the High Court in Kigali, Rwanda. In this respect I wish to refer to what I have stated in the expert report, when I highlighted the need not to criticize Rwanda, but assist them in building the justice system¹.

Update

9. On the basis of my experiences and the information and knowledge I accrued during my tenure in Kigali, I maintain what I have stated in the expert report. I believe I made no factual mistakes in the expert report and in my opinion there is no need to correct any statement.
10. I specifically maintain my main expert opinion² that, in the genocide transfer cases that I have witnessed, Rwanda has a functioning justice system, capable of investigating, prosecuting and adjudicating cases of genocide, transferred from other jurisdictions, applying international standards and providing fair trial rights for defendants.
11. More specifically, I have witnessed professional prosecutors, litigating the cases before the High Court, who are knowledgeable, dedicated and conversant both with the substance of the case as well as the legal issues in the case. Based on how the prosecutors have litigated the case, I have no doubt that the prosecution intends to prosecute the

¹ See the Expert Report dated September 19th 2015, par. 129 – 137.

² *Ibid.*, par. 120.

transfer cases both expeditiously and with respect for the rights of the defendants as enshrined in the Rwandan laws and the International conventions.

12. During the court proceedings I witnessed, and based on other information I gathered³, I assessed that the parties, but specifically the defendants as well as the defence attorneys, were given generous time and opportunity to comment on the proceedings, present views and bring forward motions. With a few exceptions, I have never seen the Judges to be unfriendly or even rude to the defendants or the defence attorneys or to have cut them short. Throughout the proceedings the Judges have maintained a professional, knowledgeable and composed attitude, free from bias. I profoundly believe that the Judges in the High Court have a sincere intent to adjudicate these transfer cases according to international standards and that they are genuinely pursuing this in a role that is, to a degree, new to them.

13. I especially highlight the fact that, from witnessing the court proceedings, there is no indication whatsoever, that the defendants were considered as political opponents of the government, who had to fear for their safety. Nor did politics play any part in the proceedings. I have never heard or seen the defendants or attorneys invoke anything in court that was political of nature or suggest that their lives or that of their families were in danger. Obviously, they are unharmed and in good condition and none of the allegations made against the government of Rwanda on the issues of safety and security prior to the transfers, have become reality.

The position of the defence in transfer cases

14. In spite of these positive findings, I have a deep concern on the status and quality of the defence attorneys acting for their clients in the genocide transfer cases. In the cases I witnessed, none of the defence attorneys performed at a level that meets any international standard. In summary: in some cases there is currently no defence, either officially or materially, in other cases the defence attorneys act or acted substandard and even irresponsible.

15. I realize that this opinion may be considered as sensitive or even inappropriate, but I find it inevitable. I equally realize that this opinion has not often been expressed, although some of the issues have also been raised during the referral trials in Uwinkindi and Munyagishari before the ICTR⁴. I have noted that both in Uwinkindi as well as in

³ See paragraphs 16 – 18 hereafter for my explanation which sources of information I used.

⁴ See for the case of Uwinkindi: *Decision on Prosecutor's Request for Referral to the Republic of Rwanda*, dated June 28th 2011, Chapter 9: "Right to an Effective Defence" at: <http://www.unictt.org/sites/unictt.org/files/case->

Munyagishari, the defence has lodged applications for the deferral of the cases and raised issues of fair trial⁵. In my opinion, what has been lacking in these applications is a reflection of the functioning of the individual defence attorneys in these cases as well as in other referral cases in Rwanda.

The cases

16. My observations and opinions on the defence attorneys, expressed in this report, are based on my observations during trial in the cases of Uwinkindi, Munyagishari, Bandora, Mugesera and Mbarushimana⁶, my personal encounters and discussion with the defence attorneys⁷ as well as discussions within the NPPA and with other actors.

17. As noted earlier, I have attended a limited number of trial sessions. However, a legal officer of the Embassy of the Kingdom of the Netherlands has attended almost all of the

documents/ict-01-75/trial-decisions/en/110628.pdf. And for the case of Munyagishari: *Decision on Prosecutor's Request for Referral to the Republic of Rwanda*, dated June 6th 2012, Chapter 10: "Right to an Effective Defence" at: <http://www.unict-05-89/trial-decisions/en/120606.pdf>.

The Referral Chamber explicitly took into account the fact that the work of the defence in the case of Munyagishari would entail considerable work outside Rwanda. The Chamber then considered (par 148) that, given the unique challenges posed by this case, the Accused should be assigned a defence attorney with previous international experiences especially in eliciting evidence from witnesses abroad and made the referral conditional to a guarantee by the President of the Rwanda Bar Association that such a defence lawyer would be assigned. However, the Appeals Chamber overturned this decision. See: *Decision on Bernard Munyagishari's Third and Fourth Motions for Admission of Additional Evidence and on the Appeal against the Decision on Referral under Rule 11Bis*, dated May 3rd 2013, Chapter III, C., 1 "First Condition", par. 101 and further. Found at: <http://www.unict-05-89/appeals-chamber-decisions/en/130503.pdf>.

The Referral Chamber found the assertion that the Accused's case is too complex for pro bono lawyers in Rwanda baseless speculation [par.155].

⁵ See Uwinkindi's request for deferral, dated December 28th 2014: "Jean Uwinkindi's Request to Revoke Referral Order", found at: <http://www.unmict-12-25/defence-submissions/en/141228.pdf>.

By his decision, dated May 13th 2015, the President of the MICT decided to refer the deferral request to a full chamber of the MICT rather than dismissing the request himself. See: <http://www.unmict-12-25/president%E2%80%99s-decisions/en/150513.pdf>. Apparently, the March 2015 monitoring report was the ground for this decision.

See Munyagishari's request for deferral, dated March 3rd 2015: "Bernard Munyagishari's Request to Revoke Referral Order", found at: <http://www.unmict-12-20/defence-motions/en/150303.pdf>.

⁶ I have not logged these observations and not always made notes, at least not when notes were taken by another person [see hereafter]. I made notes during trial sessions of Bandora [October 10 and 15, 2014], Mugesera [March 18 and 26, 2015 and April 15 2015] and Mbarushimana [March 25 2015 when I also briefly spoke to him during a break].

⁷ I have spoken in length with the former defence attorney of Uwinkindi, Mr. Gashabana, the defence attorney of Bandora, Mr. Bakotwa and the new defence attorney of Uwinkindi, Mr. Ngabonziza. The defence attorneys of Munyagishari and Mugesera, Mr. Niyibizi and Mr. Rudakemwa made appointments with me but cancelled them and since have avoided me. Generally, the defence attorneys were not comfortable speaking to me except Mr. Ngabonziza.

trial sessions during the period September to December 2014. She was accompanied by a local staff member of the embassy who translated for her and me and typed the translation on his computer. Most, but not all, of these notes have been preserved and I have received them and included them in my analyses for the purpose of this additional report.

18. Lastly, I have read all reports drafted and submitted by the monitors of the ICTR in the cases of Uwinkindi and Munyagishari. They are published on the website of the ICTR and the MICT. I have spoken occasionally to the monitors about their monitor work⁸. I have additionally spoken to the monitor⁹ of the Office of the Prosecutor, OTP, of the ICTR, who has regularly attended court sessions in the cases against Uwinkindi and Munyagishari. The reports of this monitor have not been made public.

Uwinkindi

19. The defendant Jean Uwinkindi was the first transfer case to Rwanda. The ICTR referred the case of Uwinkindi on June 28th, 2011¹⁰. He was transferred to Rwanda in April 2012 and his trial started in June of 2012. The decision to refer the case of Uwinkindi to Rwanda has a long history, dating back to 2007 and beyond¹¹.
20. My aim is not to describe and analyze the court proceedings in the case against Uwinkindi before the Special Chamber of the High Court in Kigali, Rwanda. These proceedings, the views of the parties and others involved as well as the backgrounds have been reported by the ICTR court monitors in their continuing reporting¹².
21. The notion I need to make and find relevant for my expert opinion is that, since January of 2015, and during the most critical phase of the trial, the hearing of witnesses, Uwinkindi is without any defence.
22. The origin of this situation is a conflict between Uwinkindi's two defence attorneys and the Minister of Justice about the fees to be paid to the attorneys and certain provisions in the contract. In summary, at the start of the case in Rwanda, the attorneys were paid 30.000 RwFr per hour. This was later changed into 1 million RwFr per attorney per month.

⁸ I met the new ICTR monitoring team during a lunch on March 16th 2015 in Kigali.

⁹ Vincent Lyimo, a retired Tanzanian judge.

¹⁰ <http://www.unictt.org/sites/unictt.org/files/case-documents/ctr-01-75/trial-decisions/en/110628.pdf>

¹¹ See for an overview of that history and earlier attempts to refer cases: Jennifer Wren Morris, *The Trouble with Transfers: An Analysis of the Referral of Uwinkindi to the Republic of Rwanda for Trial*, 90 Wash. U. L. Rev. 505 (2012). Available at: http://openscholarship.wustl.edu/law_lawreview/vol90/iss2/6

¹² All reports can be found here: <http://www.unmict.org/en/cases/mict-12-25>

As the case in court dragged on, the budget available for paid legal aid got depleted and in 2014 the Minister decided to fix the attorney's fees to 15 million per case, including the appeals phase and regardless the number of attorneys. In the case of Uwinkindi, the Minister unilaterally¹³ terminated the contract between him and the defence attorneys in November 2014 and presented them a new contract in which he offered to pay 15 million RwFr. By this time the Minister had paid the attorneys around 80 million RwFr in the case. The defence attorneys refused the new contract and also opposed a number of provisions in the contract¹⁴.

23. In trial, the attorneys requested to postpone the trial till a new contract was signed. When the court rejected the request and decided to move on with the trial, the attorneys appealed the decision and argued that during the appeal the trial should be stayed. When the court rejected also this request and continued the case, the attorneys ceased to appear in court leaving the defendant without defence¹⁵. The court then punished the attorneys for misconduct and delaying the trial, imposed a fine and ordered the Rwandan Bar Association to appoint new attorneys. When the RBA appointed these attorneys, Uwinkindi refused them and requested to re-appoint his old defence team. The court refused that and continued with the case. The new defence attorneys, although present in the court room, never represented Uwinkindi and are not in the possession of the case file¹⁶.

24. Unfortunately, after the court decided to continue with the trial and without any defence present, within a few days all the prosecution witnesses have been heard without being cross examined. A few defence witnesses¹⁷, which the defence team had already

¹³ Invoking his right to do so under the then valid contract.

¹⁴ See for the attorney's summary of the version of the conflict: monitor report March 2015, par. 31 – 40, monitor 2nd report December 2014, par 64 and monitor report January 2015, par 30. See for the Prosecution summary of the version of the conflict, monitor report February 2015, par. 10 – 25.

¹⁵ Although the contract between the attorneys and the Minister stipulates that the defence attorneys are obliged to continue providing legal services to the defendant for three months after termination of the contract, which the attorneys ignored.

¹⁶ For a full account of this episode see the monitor reports December of 2014 [2x], January, February and March of 2015. At the time of signing of this additional report the April report had not yet been published.

¹⁷ The defence had submitted a list of defence witnesses to the court in 2014. Nine of these witnesses live in Rwanda, in fact most are incarcerated, and were heard during two mornings in March 2015. Most of the other witnesses reside abroad. The defence attorneys had requested the Minister a budget to travel to the countries where they reside and speak to these witnesses and obtain personal information. The Minister had rejected this budget as unrealistic and requested an amended, specified budget, which the attorneys never submitted. Thus, the court was not able to pursue these defence witnesses without further information to be provided by the defence attorneys. A request by the defence to hire an investigator was denied as inconsistent with Rwandan law. It has to be noted however, that during the referral trial before the ICTR, the defence presented 49 signed affidavits by potential defence witnesses.

submitted to the court earlier, were also heard but not examined by the defence. Closing arguments have been postponed¹⁸.

25. When the trial of Uwinkindi reopened on June 2nd, 2015, Uwinkindi requested the court to postpone the trial till the MICT has taken a decision on his request to defer the case¹⁹. The prosecution is now taking the position that Uwinkindi cannot be without defence and requested the court to have the newly appointed lawyers to stay in the case and represent Uwinkindi. The High Court will take a decision on Uwinkindi's request for postponement on June 5th 2015.

Munyagishari

26. On June 6th, 2012 the ICTR Referral Chamber decided to transfer the case against Bernard Munyagishari to Rwanda. He was ultimately transferred to Rwanda on July 24th 2013.

27. Since his arrival in Rwanda, the case against Munyagishari has not made much progress²⁰. There have been endless debates on interpretation after Munyagishari refused to speak in Kinyarwanda and his right to have translation of documents in French and have translation during trial with which he was afforded. Furthermore, there have similar debates about Munyagishari's fair trial rights and his refusal to engage in the proceedings. Currently, the case has reached a stage where Munyagishari has been given the opportunity to respond to the indictment and to present his plan for his defence including the submission of a witness list. Munyagishari positions himself at trial as a defendant who cannot defend himself, does not have the support of defence attorneys as they are not paid and is not able to give any submissions as he does not have the means to do so.

28. The stall in the trial is largely due to the position that Munyagishari's two defence attorneys take in this case. The lead counsel for Munyagishari is the co-counsel in the case against Uwinkindi. Subsequently, the counsel for Munyagishari has refused to accept a contract offered by the Minister of Justice to take the case for the 15 million RwFr fee and there are no negotiations ongoing. As a result, the defence attorneys appear in court trials

¹⁸ In the meantime proceedings at the Supreme Court have started to deal with the appeals by Uwinkindi against the decisions of the High Court, notably the decision to appoint new defence attorneys and the decision not postpone trial. The Supreme Court first did not want to hear the appeals as the defence attorneys had not paid the fines yet, that were imposed by the High Court after they did not appear in court. On April 24th 2015 the Supreme Court has rejected the defence appeal, ruling that Uwinkindi does not have a free choice of a defence attorney when he is indigent and that the High Court was right to request the Rwanda Bar Association to appoint new attorneys. See: <http://www.newtimes.co.rw/section/article/2015-04-27/188219/>.

¹⁹ See footnote 5.

²⁰ All proceedings as well as backgrounds of the [lack of] developments in the cases can be found in the ICTR monitoring reports at: <http://www.unmict.org/en/cases/mict-12-20>.

as pro bono attorneys²¹. In trial Munyagishari is largely defending himself, his counsel is most of the time quiet in court and his contributions are limited to a few procedural issues and his complaint about the refusal of the Minister to present another contract²².

29. In summary: Munyagishari at this stage is in fact not represented by a professional legal counsel and refuses to get engaged in any proceedings. Munyagishari's defence attorney seems to take the position that he is not capable of defending Munyagishari at this point. In the February 25th 2015 court session, the counsel for Munyagishari is quoted as having stated that the court should ensure that Munyagishari is assisted by a professional lawyer that is enumerated, implying he is not one²³.

Mugesera

30. Leon Mugesera was deported from Canada to Rwanda on January 23rd 2012, after a long legal battle in various Canadian courts. Canada stipulated that Mugesera be tried under the Rwandan Transfer Law and his case is, indeed, adjudicated in the Special Chamber of the High Court in Kigali.

31. It has taken very long for the case against Mugesera to develop. At this stage 23 prosecution witnesses have been heard. Mugesera is provided the opportunity by the court to comment on these witnesses. So far Mugesera has not provided the court with a list of defence witnesses.

32. Mugesera is represented in court by one defence attorney. Initially, Mugesera paid his own defence attorney but later claimed indigence. As he has refused to fill in the necessary forms he has not benefitted from paid legal aid thus far.

33. What is remarkable about the defence attorney is the fact that he maintains complete silence during the court sessions and he seems to have been maintaining this posture all along the trial. It is only Mugesera that addresses the court. In conclusion, also Mugesera is not defended in court by a professional defence attorney.

Bandora

²¹ In the last two court sessions, the last one on June 3rd 2015, the defence attorneys were not present with Munyagishari unable to explain where his defence attorneys are. The court will take a decision how to proceed.

²² A summary of his view can be found in the monitoring report of January 2015, par. 24 – 28.

²³ See Monitor report Munyagishari, February 2015, par. 42. Found at: <http://www.unmict.org/sites/default/files/casedocuments/mict-12-20/submissions-non-parties/en/150326.pdf>

34. Charles Bandora was extradited from Norway to Rwanda on March 9th, 2013 after the District Court in Oslo, Norway, authorized the extradition on July 11, 2011. His first appearance in the High Court was on November 4th, 2013.
35. Bandora's case has also been tried before a gacaca court at the time the gacaca courts were active. In first instance Bandora was acquitted, but the victims and their representatives appealed the verdict²⁴ and in appeal Bandora was convicted in absentia²⁵. That verdict was later nullified because of the rule that Category I defendants cannot be tried by a gacaca court.
36. Although Bandora is one of the last of the five current defendants in the five transfer cases to have been transferred from abroad, he is the first whose case has been concluded by the High Court²⁶. Bandora has been represented by two defence attorneys, who he has selected himself independently from the Rwanda Bar Association. First he paid his lawyers from his own pocket. When he said he was no longer able to do so, he applied for paid legal aid. On September 14th 2014 a contract was signed between the defence attorneys and the Minister of Justice, in which the defence attorneys accepted the 15 million RWFr fee.
37. In June of 2014 both defence attorneys were fined by the High Court for contempt of court and delaying the trial after they had not shown up for the court session. The attorneys had sent a letter to the court requesting to adjourn the case, after their client had allegedly run out of financial resources to pay his lawyers personally, which led the attorneys to apply for paid legal aid at the Ministry of Justice²⁷.
38. During trial, on various dates between September and December 2014, witnesses were heard in court. The prosecution presented twelve witnesses, the defence fourteen. Some of the fourteen defence witnesses exonerated Bandora for the crimes he is charged with. Many of these witnesses were themselves convicted of participating in these crimes and were incarcerated. The prosecution witnesses were very different in nature. Some

²⁴ One of the witnesses in the trial against Charles Bandora testified that he was a judge in the gacacas court and composed a file against Bandora. He was in charge of cases of theft and was not a member of the gacacas court who acquitted Bandora in the criminal case of genocide. He testified that victims and *ibuka*, the umbrella organization that represents victims of the genocide, came to him and requested him to appeal the acquittal which he did.

²⁵ Information provided by the legal counsel of the Dutch embassy indicates it is not certain whether Bandora was convicted for genocide crime or theft.

²⁶ On May 15th 2015 Bandora was convicted by the High Court in Kigali to a 30-years imprisonment sentence for his role in the genocide. The 40-page verdict is being translated into English. The court ruled that they found a mitigating circumstance in the fact that Bandora was cooperative with the court throughout the trial.

²⁷ See: <http://www.newtimes.co.rw/section/article/2014-06-26/76393/>.

incriminated Bandora, some witnesses retracted their earlier, incriminating statements, two witnesses were ten and fourteen years old at the time of the alleged crimes. Another important incident happened during testimony which will be explained hereunder.

39. These hearings have been the first opportunity to watch and analyze how witnesses were examined. In general, the parties made a serious attempt to solicit from the witnesses what they had witnessed and other information. The judge was very active in the hearing of the witnesses. He asked the witness many questions and often interrupted the questioning by the parties. All parties showed basic knowledge about witness' testimony such as the difference between an eye witness and a hearsay witness.

40. However, evaluating the overall conduct of especially the defence, their performance was in many ways problematic.

- a. In the first place, the hearing of the witnesses by the defence, either in cross examination of the prosecution witnesses or in examining the defence witnesses, went chaotic. The defendant personally led much of the questioning without any guidance or direction from his attorneys, who were silently sitting next to him. The two defence attorneys did not seem to have any agreement on a structure, strategy or line of questioning, constantly taking over the questioning from each other and interrupted by Bandora.
- b. The questions by the defence were very brief and superficial²⁸. Most of the times, when the witness made a point, it wasn't followed up and the attorneys constantly switched topics with the witness.
- c. Many questions by the defence were irrelevant, or seemed to be, and repetitious. The presiding judge interrupted the defence attorneys occasionally on this.
- d. The defence attorneys as well as Bandora repeatedly mentioned the name of a protected witness, whose name was supposed to be not used in public court. At one point, the presiding judge threatened the defence by sanctioning them for this.

41. More problematic, in my opinion, is the fact that the defence left many opportunities unused, especially in reaction to prosecution witnesses. This in particular happened when two detained prosecution witnesses, who had earlier incriminated Bandora during gacaca, retracted their statements in court, claiming they were visited by the prosecutors in the case in prison, prior to their testimony in court, who promised they would be

²⁸ Usually, the defence took not more than 15 to 20 minutes to examine their witnesses and on one occasion the defence asked a defence witness only roughly ten questions.

released when they testified against Bandora. Asked why they had testified against Bandora during the appeals phase in gacaca, they said they were forced by businessmen to testify against Bandora, after his acquittal, as these businessmen wanted to take Bandora's possessions.

42. Although it is a well-known phenomenon that witness tampering has taken place in gacaca trials and, at a minimum, allegations of this nature have often been made²⁹ without knowing the veracity, it is incomprehensible that the defence attorneys did nothing with this information: no additional investigation was requested, nor did the defence submit an additional list of witnesses to clarify these allegations, that, if proven true, could have an impact on the outcome of the case. One of the businessmen, who had allegedly influenced the witness, was himself a witness in the trial before the High Court but was not questioned by the defence about this issue.

43. Equally worrisome is the fact that such a limited number of witnesses were heard, while, during the testimony of the witnesses who were heard in trial, many other names surfaced who allegedly were present during the charged crimes and attacks, while the defence made no attempt to hear those witnesses, at least not noticeably. Lastly, the defence attorneys have made no attempt to locate witnesses living abroad³⁰ and never requested the Minister a budget to investigate the case for the defence.

44. In sum: I believe the defence's performance in trial, especially in hearing the witnesses³¹, although there are no signs of bad intent or intentional negligence, is indicative of the lack of knowledge and experience in cases of genocide crime as well as the immaturity of the state of the defence in serious criminal cases. They simply were not capable of building a credible defence case that could have impacted on the outcome of the case.

Mbarushimana

45. Emanuel Mbarushimana was extradited to Rwanda from Denmark on July 3rd, 2014 after the Supreme Court in Denmark rejected his appeal against extradition in November 2013. He has since been detained, but his case has not been tried as yet.

²⁹ In fact another witness testified that the same had happened to him but this time by the defence attorneys.

³⁰ When I asked the lead counsel later why he had not made any attempt as described above, he said it was not necessary, leaving me with the impression that the case had already burdened him enough in time and resources.

³¹ Unfortunately, I was not in a position to hear their closing arguments or read them.

46. Up to the date of this additional report, Mbarushimana has not yet chosen his defence counsel. Upon arrival in Rwanda, he was led before a local court of Kanombe, Kigali as the local court where he was arrested, the airport. The local court ordered to supply to him a list of all defence attorneys in Rwanda after Mbarushimana claimed he had not received a full list of the attorneys to choose from. Since these initial appearances, Mbarushimana has not chosen a defence attorney, while this issue has been the subject of many court sessions by various judges.

47. Mbarushimana appeared before the High Court on March 25th, 2015³². Again, the discussion was about the list of attorneys, supplied to him. Mbarushimana claims he was provided a list of 500+ attorneys by the Rwandan Bar Association, but he pointed out that the Government of Rwanda, when they litigated the extradition case in Denmark, claimed that there were more than 800 attorneys in Rwanda, that could defend him. He asked the court for that list. In the end the court ordered to supply him a full list³³.

48. At the date of the closure of this report, I understand Mbarushimana still has not chosen a defence attorney. However, there are two defence attorneys, who negotiated with the Rwanda Bar Association to assign to him a defence team of six persons, including a monitor, an investigator and two foreign defence attorneys³⁴.

Conclusions

49. Firstly, I would like to note that the assessment of the performance by the defences in the five transfer cases, is not to determine responsibility for the current situation with the defence in transfer cases, nor do I wish to point fingers. I simply want to opine that in the transfer cases there is either no defence, formally or materially, or largely insufficient and/or unqualified defence.

50. However, I do believe it is an inevitable conclusion that nor the defendants, nor the [majority of the] defence attorneys have any trust in the government institutions. It either leads to complacency or animosity and confrontational attitudes and some of the defence attorneys and defendants seem to be determined to fight every possible fight and will use any tactics to frustrate the trials, including obstruction of the proceedings.

³² Where I was present and I understood this was his first appearance in High Court.

³³ This decision is remarkable as the Supreme Court decided in the case against Uwinkindi that he does not have the right to choose an attorney from a list, if he is provided the status of indigence.

³⁴ Information supplied by Victor Mugabe, Executive Director of the Rwandan Bar Association on May 14th 2015.

51. Based on my observations and the information I collected, it is fair to say that the defence is by far the weakest link in the justice sector in Rwanda. The main reason probably is that it began developing only very recently. Rwanda has no history or extensive experiences with defence in criminal cases and no well-developed system of government financed legal aid. Additionally, unlike the NPPA and the judiciary, that both received extensive assistance in capacity building from donors, the Rwanda Bar Association hardly received any assistance³⁵. This has resulted in an organizational immaturity and incapability dealing with genocide cases at this level, which are considered as the most serious and complex criminal cases the world has ever seen. This is certainly true when international standards are required.

52. I have in particular serious doubts whether defence attorneys in Rwanda are capable of conducting a robust and credible defence investigation aimed at establishing exonerating evidence. Given the reality of the Rwandan genocide cases, such will involve extensive investigations abroad as many of the potential defence witnesses are living outside Rwanda, sometimes in places as far as Northern America and Australia. These are time consuming, resource intense and expensive investigations, that require the support of the government of Rwanda in brokering international bilateral or multilateral judicial cooperation. At this stage and without any support, I cannot envision that defence attorneys in Rwanda are capable or even in a position to perform such investigations³⁶.

53. To conclude, when the transfer cases were decided, Rwanda was still in the process of developing a legal aid system. Amendments have been made along the way, conflicts have arisen, improvements are still being implemented and not all disputes are settled. These are all healthy signs that the justice system is in action, that the intent is to guarantee that defence attorneys will be up to the task and I have no doubt that a balance will be found in the future, that is accepted by all parties³⁷.

Relevance of defence in genocide cases

³⁵ The Dutch embassy initiated a project for the training of defence attorneys in Rwanda that deals with genocide cases through the RBA and made funds available, but the Dutch Bar Association declined to assist, probably not to undermine their defence in trials and extradition cases in the Netherlands.

³⁶ See also footnote 4 where I made reference to ICTR's referral decision in Munyagishari, specifically the court's decision to make the referral conditional to a guarantee by the President of the Rwandan Bar Association that the Accused will be assigned a defence attorney with proven experience in international investigations.

³⁷ It is worth noting that the Minister of Justice promulgated his legal aid policy in September 2014 and started to supply a budget for legal aid in Rwanda, including some funds for paid legal services in transfer genocide cases. At: http://www.minalust.gov.rw/fileadmin/Documents/MoJ_Document/Legal_Aid_Policy_-_IMCC_Feedback.pdf

54. The role and importance of qualified, well performing defence attorneys in these genocide transfer cases cannot be underestimated or undervalued. It is my opinion that the right to be represented by a defence attorney is not merely a procedural right, but in fact what it should represent is the need, as in any criminal case for that matter, to bring fairness and balance to the investigation and trial. The defence's role is to test the evidence presented by the prosecution and build the strongest possible defence case for the defendant, with the aim to present the court alternatives for the case that is presented by the prosecution. If the defence is capable of doing that, then the judges can make a real determination on the truth in the case, based on alternative scenarios. If the defence is not capable of presenting [strong] evidence pointing in another direction than the prosecutor's case, at least the judges can safely assume the prosecution case is a better case for the truth. In that sense a defence investigation is always useful, when conducted professionally, even in case it does not yield much result.

55. In this respect, it has to be borne in mind the nature of the criminal proceedings under Rwandan law. While Rwanda's legal system is based on the legal system brought to the country by its colonizer and therefore is more inquisitorial in character, after the promulgation of the Transfer Law and the transfers of the cases from the ICTR, Rwanda has definitely chosen that the trials in the transfer cases are accusatorial in nature.

56. In an inquisitorial legal system the judges assume responsibility for assessing the facts in the case. The court will adjudicate the case based on the investigation by an investigation magistrate³⁸, who will compile a dossier with all the results of the investigation. This comes on top of what the criminal investigation conducted under the authority of the prosecutor has yielded. During the investigation by the magistrate, the defence attorney is a full party and can request any type of investigation to be carried out by that magistrate. However, during an accusatorial proceedings, as it is the case in transfer cases in Rwanda, there is no neutral magistrate to conduct serious trial or pre-trial fact-finding for both parties³⁹ and the burden to prove and present a probable case and alternative scenario than the prosecution presents, is solely in the hands of the defence attorney⁴⁰.

³⁸ Under Rwandan law, there is no investigation magistrate to conduct pre-trial judicial investigations.

³⁹ Equally, the trial judges in the transfer cases in Rwanda adopt a similar attitude as judges in international tribunals where they leave the hearing of the witnesses during trial to the parties, including the cross examination and may ask additional questions at the end of the hearing of a witness.

⁴⁰ The principle of fairness in regard of the need for defence investigations was eloquently described by ICC Judge Christine van den Wijngaert in her dissenting opinion in the case of the *Prosecutor v. Katanga*, par. 92. The subsequent paragraphs are equally worth reading where she describes the unreasonableness of the decision of the Majority not to grant the defence time to conduct additional investigations after the Chamber had decided to re-characterize the charge against Katanga. Found at: <http://www.icc-cpi.int/iccdocs/doc/doc1744372.pdf>

57. Given the accusatorial nature of the proceedings in the transfer cases, there is a clear need for a strong and qualified defence.
58. An additional circumstance that needs to be adduced here, is the fact that the case file presented by the prosecution is rather basic. This file consist almost completely on the criminal investigation carried out by a unit of the NPPA by investigators on loan from the Rwanda National Police. This investigation, as I have assessed in my study of the working processes of the GFTU, is normally carried out over the period of two weeks on the average, during which a limited number of witnesses are briefly interviewed⁴¹.
59. As I have pointed out earlier, genocide cases are the most complex and time consuming criminal cases, I know. Certainly when the investigation is carried out many years after the events have taken place, as is the case now in Rwandan genocide cases, and the case is exclusively built on witness testimony⁴², the investigators and other fact finders, in their quest to ascertain the truth, face many obstacles: falling and fading memories, source amnesia and source blending, trauma and stress that has impeded on the quality of what witnesses remember, the inability of witnesses to provide basic information about the crime and the perpetrators, such as time, place and geography as well as any numerical information such as distances, numbers, heights, etc. These inability are often credited to illiteracy and the lack of education of many witnesses as well as cultural backgrounds. By now there is an impressive and important body of academic research that analyzes and describes these problems in detail⁴³.

⁴¹ In most cases I assessed found approximately 10 – 15 witnesses and the average time spent with one witness is around 1 – 2 hours including drafting the account and the read back of the statement to the witness. Additional investigations may be carried out after the arrest and transfer of the defendant but I have seen no substantial investigations at this stage. Obviously, the transferred cases from the ICTR are an exception as these cases were fully investigated by the ICTR.

⁴² Unlike the Holocaust during World War II, during which the Nazis meticulously recorded everything they did, the Rwandan genocide is known for its stunning lack of documentation, largely the result of the oral cultures in Rwanda.

⁴³ I present here just a few examples of this literature: Nancy Combs: *Fact Finding Without Facts, The Uncertain Evidentiary Foundations of International Crimes Convictions*, Cambridge University Press, 2010. Alexander Zahar, *Witness memory and the manufacture of evidence at the international criminal tribunals. Future Perspectives on International Criminal Justice*, Carsten Stahr & Larissa van den Herik, eds., pp. 600 - 610, T.M.C. Asser/Cambridge University Press. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1323079; Alexander Zahar, *The problem of false testimony at the International Criminal Tribunal for Rwanda. Annotated Leading Cases of International Criminal Tribunals*, Vol. 25: International Criminal Tribunal for Rwanda, 2006-2007, André Klip And Göran Sluiter, Eds., Pp. 509-522, Intersentia, 2010. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1448124. Timothy Longman & Théoneste Rutagengwa, *Memory, Identity & Community in Rwanda*, in *My Neighbor, My Enemy: Justice And Community In The Aftermath Of Mass Atrocity* (Eric Stover & Harvey M. Weinstein eds., 2004).

60. Another factor that has been highlighted in literature is the prevalence of perjuring witnesses. It is sure that in every jurisdiction, witnesses occasionally perjure themselves and every investigator, prosecutor, judge and defence attorney can attest to that. Indeed, Rwandan genocide cases have had their share of perjuring witnesses and in general the prevalence and nature of perjuring witnesses before tribunals have been described⁴⁴. An additional example of perjuring witnesses in a Rwanda genocide case can be found in the national jurisdiction of Canada where the Superior Court in Ontario in the case against Jacques Mungwarere acquitted the defendant in July 2013 after a number of witnesses confessed to have lied to the court⁴⁵.

Final conclusions

61. I make all these notions and put them together in this context, not to assert that establishing the truth in Rwanda genocide cases is not possible. In fact, based on my years of experience in criminal cases of mass atrocities in Africa and elsewhere, including Rwanda genocide cases, I am certain and convinced that the facts can be established but only under the condition of high quality and professional investigations, applying internationally accepted standards. Part of this professionalism and these standards is the necessity to have defence attorneys who possess the knowledge, experience and the resources to conduct investigations for the defence, including the capabilities to conduct investigations abroad.

62. Based on my observations in the last year in Rwanda, I have profound doubts whether the Rwandan defence attorneys, currently assigned to the transfer cases, can do that. It is a fact that, so far, only one defence attorney has presented some local witnesses to the court. None of the defence attorneys has conducted any investigation abroad and it is highly doubtful if any of them has both the knowledge, experience or is in the position to conduct such an investigation. What the consequences for the outcomes of the cases are, is still to be assessed. Until today only in the case against Bandora the High Court has given its verdict⁴⁶.

63. It is for all these reasons that I recommend the jurisdictions that extradite or transfer defendants to Rwanda for trial, to provide the defendant with a defence attorney who

⁴⁴ See Combs: *Fact finding without Facts*, Chapter 5. In Chapter 5C, Combs describes a fairly large number of examples of perjuring witnesses before the ICTR. It leads her to state: "The importance of adequate investigations cannot be overestimated" [page 148].

⁴⁵ I have not been able to locate the verdict. I know there is no English translation of the French version. See for a summary of the case: <http://www.internationalcrimesdatabase.org/Case/1026/Mungwarere/>. The prosecutors in the case of Mungwarere did not appeal the verdict.

⁴⁶ See footnote 24.

has proven to be capable of what I have described here. When this defence attorney is then coupled to a Rwandan defence attorney, funded by the Minister of Justice in Rwanda and provided funds for conducting investigations, which is on offer by that same Minister, it seems to me that it ensures the necessary and adequate defence capabilities for the defendant that meet the required standard and guarantees not only a procedural fair trial but also a fairness to the trial.



Martin Witteveen

Kigali, June 3rd 2015.

[End of text]



Pour Réception: MINIJUST
Date: 21 AUG 2013

Kigali, ku wa 19/08/2013

N/Réf.: Let 3018../Bât./RA/08/2013

Bwana Umunyamabanga Uhoraho/Intumwa Nkuru ya Leta Yungirije Kigali

Impamvu: Kubashyikiriza Budget irebana no gukusanya ubuhamya bushinjura Uwinkindi mu mahanga no mu Rwanda

Bwana Munyamabanga Uhoraho,

Nshingiye ku cyemezo cy'Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha byo mu rwego mpuzamahanga n'ibyambuka imipaka cyafashwe ku wa 16/05/2013 cyane cyane mu ngingo yacyo ya 24 n'ya 39, icyo cyemezo kikaba cyarashyikirijwe MINIJUST n'Urugaga rw'Abavoka ku wa 28/05/2013;

Nshingiye kandi ku myanzuro y'Inama yahuje MINIJUST n'Abunganira Uwinkindi ku wa 24/06/2013, igamije gusuzumira hamwe imigendekere y'amasezerano abunganira Uwinkindi Jean bagiranye n'Urugaga rw'Abavoka na MINIJUST ku wa 31/10/2013 no gusuzuma uko ibyasabwe n'Urukiko Rukuru bijyanye no gushaka abatangabuhamya bashinjura Uwinkindi byaboneka,

Nejewe no kubashyikiriza Budget yateguwe n'itsinda ryunganira Uwinkindi igamije gukusanya Ubuhamya bumushinjura haba mu gihugu imbere ndetse no mu mahanga.

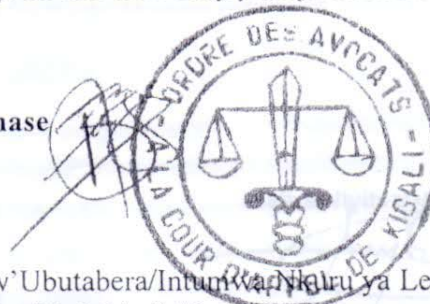
Nk'uko bigaragara mu mbonerahamwe zitandukanye zisobanura iyo budget ziri ku mugereka, ibikorwa by'ingenzi bikubiye muri iyo budget bigizwe n'amafaranga y'Urugendo (Air Tickets), mission allowances, n'insimburamubyizi.

Iyi budget muramutse muyemeye uko iri cyangwa mukayikorera Ubugororangingo, ayo mafaranga yashyirwa kuri compte musanzwe N° 011-1001482 yitwa BARREAU DE KIGALI/ASSISTANCE JURIDIQUE iri muri FINA BANK nk'uko biteganywa n'amasezerano y'ubufasha mu by'amategeko yashyizweho umukono hagati ya Barreau na MINIJUST ku wa 03/08/2012 mu ngingo ya 13.

Muramutse mukeneye ibindi bisobanuro kuri iyi budget, mushobora kuganira n'abagize Itsinda ryunganira Uwinkindi tugeneye kopi nk'uko nabo babyiyemeje mu ibaruwa yabo batugejejeho ku wa 16/08/2013 iri ku mugereka.

Mugire amahoro

Maitre RUTABINGWA Athanase
Umukuru w'Urugaga



Bimenyeshewe:

- Nyakubahwa Minisitiri w'Ubutabera/Intumwa Nkuru ya Leta ;
- Abagize itsinda ryunganira Uwinkindi (Bose)

Maître Gatera Gashabana
Maître Niyibizi Jean Baptiste
Avocats

ORDRE DES AVOCATS
POUR RECEPTION

Date : 16/08/2013

Signature : 

Kigali, kuwa 14/08/2013

Bwana Umukuru w'Urugaga rw'Abayoka

Impamvu : Kubagezaho imbonerahamwe y'ibikenewe mu gukora iperereza

ku batangabuhamya bo gushinjura Uwinkindi Jean

Nyakubahwa Bâtonnier,

Mu rwego rwo gushyira mu bikorwa icyemezo cyafashwe n'Urukiko Rukuru mu rubanza RP0002/12/HCCI kuwa 16/05/2013 haburana Ubushinjacyaha na Uwinkindi Jean twifuzaga kubamenyeshya ko bizaba ngombwa y'uko abunganizi b'uregwa uko ari babiri bajyana gukora iperereza mu bihugu binyuranye nk'uko bigaragara ku mugereka w'uru rwandiko

Ibyo bikaba bishingiye ku buremere bw'ikibazo cyo kubonana n'abatangabuhamya bari mu nkambi z'impunzi ziri hanze, ako kazi kakaba katakorwa n'umuntu umwe gusa cyane cyane ko hagomba kuba ubufatanye hagati y'abazakora iperereza mu gushakisha ibimenyetso simusiga mu nyungu z'ushinjwa. Bizaba ngombwa no kwifashisha abantu bahamenyereye.

Nk'uko mwabidusabye tubashyikirije budget y'ibizakenerwa ku mugereka w'iyi baruwa ikubiyemo ibi bikurikira :

- Amafaranga y'urugendo
- Amafaranga ya mission,
- Insimburamubyizi mu gihe cy'amezi hafi ane imirimo yo gukusanya ibimenyetso izamara

Muri rusange budget ikenewe muri iki gikorwa ikaba ingana na **103.882.625frw** nk'uko bigaragara muri annexes ziri kur'iyi baruwa

Tukaba twiteguye kubagezaho ibindi bisobanuro byose mwakenera

Tubaye tubashimiye

Maître Gatera Gashabana

Maître Niyibizi J. Baptiste



Imbonerahamwe y'ibikenewe mu gukora iperereza ku batangabuhamya bo gushinjura

I. Amafaranga akoreshwa mu butumwa (tickets + mission fees, insimburamubyizi)

A. Budget yo gushaka abatangabuhamya bari mu mahanga

Ibihugu n'imigi barimo	Umubare wabo	Iminsi bizamara	Ikiguzi cy'indege		Icumbi, ifunguro, local transport, itumanaho			Total
			P.U	P.T	P.U	S/T	P.T	
Kenya-Nairobi	3	6	285\$	570\$	272\$	1632\$	3264\$	3834\$
Africa y'epfo-Soeto	1	4	470\$	940\$	336\$	1356\$	2712\$	3652\$
Congo-Brazaville	13	20	1050\$	2100\$	347\$	6940\$	13880\$	15980\$
Malawi-Blanthyre	8	15	708\$	1416\$	194\$	2910\$	5820\$	7236\$
Swaziland-Mbabane	1	4	780\$	1560\$	262\$	1048\$	2096\$	3656\$
Mozambique-Maputo	3	7	830\$	1660\$	243\$	1701\$	3402\$	5062\$
Tanzanie-Arusha	2	5	530\$	1060\$	173\$	865\$	1730\$	2790\$
Burundi-Bujumbura	5	14	225\$	450\$	202\$	2828\$	5656\$	6106\$
RDC-Lubumbashi	1	4	870\$	1740\$	216\$	864\$	1728\$	3468\$
USA-Newyork	1	7	1700\$	3400\$	475\$	3325\$	6650\$	10050\$
Grand Total								61834\$
Ibidateganyijwe bihwanye na 5%								3091\$
Total Général		86 jours						64925\$

III Budget ikynewe yose

Budget yo gushaka abatangabuhamya mu mahanga

42.523.870frw

Budget yo gushaka abatangabuhamya bari mu Rwanda

878.750frw

Insimburamubyizi ku bavoka 2 mu gihugu cy'iminsi 112

60.480.000frw

1.892.620

ny

B. Budget yo gushaka abatangabuhamya bari mu Rwanda

Ahantu	Umubare	Iminsi	Kwishyura Imodoka	
			P.U	P.T
Mayange-Kanzenze	1	1	30.000Frw	30.000Frw
Karera-Gashora	1	1	30.000Frw	30.000Frw
Gereza ya Rilima	13	7	30.000Frw	210.000Frw
Kayenzi	3	3	30.000Frw	90.000Frw
Mutara	4	2	40.000Frw	80.000Frw
Gashora	1	2	30.000Frw	60.000Frw
Kabarondo	5	2	30.000Frw	60.000Frw
Muhanga	1	1	25.000Frw	25.000Frw
Huye	1	1	50.000Frw	50.000Frw
Gikoro	1	1	30.000Frw	30.000Frw
Kayumba	2	1	30.000Frw	30.000Frw
Maranyundo	1	1	30.000Frw	30.000Frw
Musanze	2	1	50.000Frw	50.000Frw
Kigali	1	1	10.000Frw	10.000Frw
Rwanza	1	1	50.000Frw	50.000Frw
Grand Total				835.000FRW
Ibidateganyijwe kuri 5%				41750frw
Total Général		26jours		876.750frw

II. Igihembo cy'amasaha akorwa n'Abavoka mu gihe bakora iperereza:9h/jr

Aho bari	Iminsi bizamara	Amasaha y'akazi arimo	Igihembo ku isaha	P.U	P.T
Mu mahanga	86	774	30000frw	23.220.000frw	46.440.000frw
Rwanda	26	234	30000frw	7.020.000frw	14.040.000frw
Grand Total	112				60.480.000frw

III. Budget ikenewe yose hamwe

Budget yo gushaka abatangabuhamya mu mahanga	Budget yo gushaka abatangabuhamya bari mu Rwanda	Insimburamubyizi ku bavoka 2 mu gihe cy'iminsi 112	Total
42.525.875frw	876.750frw	60.480.000frw	103.882.625

ny
f



INYANDIKOMVUGO Y'INAMA YAHUJE MINIJUST N'ITSINDA RYUNGANIRA UWINKINDI JEAN

IGIHE: 24/06/2013

HEHE?: MU BIRO BYA PS/DAG MINIJUST

ABAYITABIRIYE: PS/MINIJUST Mr. Pascal B. Ruganintwali, Me Gatera Gashabana, Me Niyibizi Jean Baptiste, Mr. Victor Mugabe (Secetaire Executif KBA)

IMPAMVU: Gusuzumira hamwe imigendekere y'amasezerano abunganira Uwinkindi Jean bagiranye n'Urugaga rw'Abavoka na MINIJUST ku wa 31/10/2013 no gusuzuma uko ibyasabwe n'Urukiko Rukuru bijyanye no gushaka abashinjura Uwinkindi byaboneka

Imigendekere y'inama n'imyanzuro yayifatiwemo

1. Gusuzuma imigendekere y'ammasezerano

Umunyamabanga Uhoraho muri MINIJUST yifuje kumenya aho dosiye ijyanye no kunganira Uwinkindi igeze Me Gatera Gashabana na Me Niyibizi basubiza ko bakomeje kuja babonana kenshi n'uko bunganira muri gereza, kwiga no gutegura neza dosiye y'uregwa, kwitaba Urukiko no kuburana igihe bahamagajwe. icyakora bagaragaje ko kuva urubanza rwatangira kugeza ubu bagiye akenshi baburana inzitizi bityo urubanza nyirizina mu mizi rukaba rutatangira neza kuko hagitegerejwe ubuhamya bw'abashinjura Uwinkindi Jean butaraboneka nk'uko bikubiye mu cyemezo cy'Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha byo mu rwego mpuzamahanga n'ibyambuka imipaka cyafashwe ku wa 16/05/2013 icyo cyemezo kikaba cyarashyikirijwe MINIJUST n'Urugaga rw'Abavoka.

PS MINIJUST yabajije abunganira Uwinkindi niba gusura umufungwa kenshi biteganyijwe muri art.3 y'amasezerano yavuzwe haruguru bikiri ngombwa, cyangwa se niba hatarebwa uburyo iyo minsi yagirwa mike ndetse n'iminsi n'amasaha byo gutegura dossier bikagabanywa kuko aho bigeze abunganizi ba Uwinkindi bamaze kumenyera iyo dosiye ku buryo bamaze kuyumva cyane.

Abunganira Uwinkindi bagaragaje ko iminsi yo gusura umufungwa itagabanywa muri iki gihe cyo gutegura urubanza mu mizi kuko uwo bunganira atajijutse cyane bityo akaba asaba ko yajya asurwa igihe cyose abishakiye kugira ngo agire icyizere ko dossier ye yitabwaho neza n'abashinzwe kumwunganira. Ikindi kandi n'uko na gereza yamuhaye uburenganzira bwo guhamagara kuri telephone abamwunganira igihe cyose yumva abakeneye. Bityo bikaba byagira

ngaruka zitari nziza igihe yahamagara yifuzza kubonana n'abunganizi be bakamubwira ko bataboneka kuko hari iminsi yagenwe yo kumusura batagomba kurenza.

Cyakora ku bijyanye n'amasaha yo gusura, hemejwe ko atarenza ane (4) ku munsi, amasaha yo gutegura dosiye ashirwa kuri atatu (3) iminsi ibiri (2) mu cyumweru mu gihe cy'amezi atatu mu uhereye igihe impande zombie zishyiriyemo umukono kuri iyi raporo.

Nyuma y'aya mezi atatu hazongera hategurwe inama izahuza abo bireba hasuzumwe niba iyo ngingo itasubirwamo.

2. Gusuzuma uko ibyasabwe n'Urukiko Rukuru ku gushaka abatangabuhamya bashinjura Uwinkindi byaboneka

Nk'uko bigaragara mu cyemezo cy'Urukiko Rukuru cyo ku wa 16/05/2013 mu ngingo yacyo ya 24, abunganira Uwinkindi basabwe gushyikiriza MINIJUST na Barreau ibikenewe kugira ngo bashobore gukusanya ubuhamya bw'abashinjura Uwinkindi abenshi muri bo baherereye hirya no hino mu mahanga ndetse n'abandi bari mu Rwanda.

Kuri iyi ngingo abunganira Uwinkindi bagaragaje, list y'abatangabuhamya bifuzza kubonana nabo n'aho baherereye ndetse na budget ikenewe muri rusange kugira ngo bashobore kubona ubwo buhamya, kubusuzuma no kubwifashisha bategura urubanza. Banagaragaje ko bafite imbogamizi z'uko bahawe igihe gito ugereranyije n'umubare w'abatangabuhamya bateganyanya kubonana nabo kuko Urubanza ruzasubukurwa tariki 05/09/2013.

Kuri iyi ngingo, PS MINIJUST yavuze ko amafaranga akenewe atahita aboneka ubu kuko demande yatanze mu kwezi kwa gatanu hagati hari hategurwa budget nshya y'Umwaka wa budget 2013/14 bityo abunganira Uwinkindi bakaba bagomba gutegereza budget nshya igatorwa kandi bikaba biteganyijwe ko izatangira gushyirwa mu bikorwa 01/07/2013.

Hagati aho ariko PS/MINIJUST yasabye abunganira Uwinkindi ko basubira muri budget bakayitanga isobanutse kurushaho kandi igaragaza ibikenewe bya nyabyo kandi bya ngombwa. Ku birebana n'abatangabuhamyabo mu mahanga, abunganira Uwinkindi basabwe kugaragaza neza aho abo bifuzza kubonana nabo mu mahanga baherereye byaba ngombwa bakavugana nabo ku buryo bazajya kubasura bazi aho baherereye.

Abunganira Uwinkindi bamenyeshejwe ko ku bijyanye na frais de mission bazayihabwa hagendewe kuri tariff ya Leta ari nayo mpamvu basabwa kugaragaza neza aho abo bazajya gusaba ubuhamya haherereye neza kandi bakazajyayo bavuganye nabo. Cyakora ibi ntibujijwe ko abunganira Uwinkindi bateganyanya impereze nke yakoresheye igihe uwo bagiye gushaka agize impamvu ituma batamusanga aho yari yababwiye bamusanga.

Abunganira Uwinkindi basabwe ko banasubiramo ibiciro by'amatickets y'indege hagendewe ku biciro bya nyabyo bikorehwa n'abasanze bakora ingendo zerekeza mu bihugu bazajyamo.

Abunganira Uwinkindi banamenyeshejwe ko basabwa kuzajya bagaragaza pièces justificatives z'amafaranga ya mission bazaba bahawe.

Abunganira Uwinkindi bakaba barasabwe gutegura ibi bisabwa bakabishyikiriza MINIJUST budget ya 2013/14 icyimara gutorwa.

Bikorewe i Kigali ku wa 24/06/2013

Mr. Pascal B. Ruganintwali
PS/DAG MINIJUST

Me Gatera Gashabana
(Uwunganira Uwinkindi)

Me Niyibizi Jean Baptiste
(Uwunganira Uwinkindi)

Victor Mugabe
(KBA ES/Umwanditsi)

Mugire amashuri

Majore BUTABINGWA Athanase
Umukuru w'Urugaga

Amashuri yashyirahwe:

- * Nyakubahwa Minisitiri w'Ubutebwa/Inshyamba y'U Rwanda
- * Abagize itandata ry'unganira Uwinkindi (Bose)



MINIJUST-NPPA & KBA MEETING

Date: 08/10/2012, 10:30 am -11:45 am

Venue: MINIJUST Minister's Office

Subject: FACILITATION FEES FOR UWINKINDI DEFENSE COUNSEL

PARTICIPANTS:

1. Honorable Tharcisse KARUGARAMA/Minister of Justice & Attorney General
2. Mr. Pascal B. RUGANINTWALI/PS&DAG MINIJUST
3. Mr. Alphonse HITIYAREMYE/Deputy Prosecutor General
4. Mr. John Bosco SIBOYINTORE/National Prosecutor/Head of Genocide Fugitives Tracking Unit/NPPA
5. Ms. Yasmine CHUBIN/Advisor to the Prosecutor General
6. Me Athanase RUTABINGWA/KBA President,
7. Mr. Victor MUGABE/Executive Secretary/KBA

Background

Rwanda received the Transfer of UWININDI Jean from ICTR in April this year. He declared himself indigent and the NPPA requested the Kigali Bar Association to provide a list of lawyers with at least 10 years of experience which was definitely done.

According to the organic law N°11/2007 of 16/03/2007 as modified and complemented by the Organic law N° 03/2009 of 25/05/2009 concerning the transfer of cases to the Republic of Rwanda from the ICTR and other States, which grants the detainees the right to chose a lawyer or a team of lawyers of his/her own choice among the list of qualified lawyers, Uwinkindi preferred Me Gatera Gashabana & Me Jean Baptiste Niyibizi. However, this choice was not communicated to the Ministry of Justice which is the paying institution for the defense council through its legal aid fund.

On 18/07/2012, Me Gatera Gashabana presented to the Kigali Bar Association a bill for the services rendered to Uwinkindi which was calculated according to the ICTR rates. The KBA President requested him to revise the rates and present a more reasonable rate by considering the legal aid aspect in the Uwinkindi case. The defense counsel delayed to revise the bill and on 21/08/2012 a team made of the PS MINIJUST, The Head of Genocide Fugitives Tracking Unit in the NPPA, The Advisor to the Prosecutor General, The KBA President and the KBA Executive Secretary met and propose rates that should be presented to the Defense counsel. The rates were calculated basing on the normal KBA rates set up in 1997.

The moment the rates were presented to the defense counsel he declared that the proposal was too low.

The way forward

1. The meeting agreed on the following:

- ❖ The work done by the defense counsel as of now has to be paid.
- ❖ Payment shall be calculated basing on the normal Kigali Bar Association rates, i.e 30,000 Rwf per hours and days as agreed upon in the meeting of 21/08/2012 without distinction between the principal Defense Counsel & co-counsel at the pre-trial & trial phase
- ❖ In the next period and as the trial phase has began, the rate shall be 30,000 Rwf per hour for the principal counsel & co-counsel with 6 maximum hours of hearing per day. The number of days per month shall be calculated by the defense counsel basing on the verifiable means by the paying entity (MINIJUST).
- ❖ Concerning the visitation hours at the Prison, the MINIJUST shall prepare a visitation form that will be filled out by the defense counsel determining hours for meeting of the counsel and the detainees. At this stage, the rate of 30,000 Rwf per hour shall apply as well.
- ❖ The Ministry of Justice shall prepare a specific contract for the Uwinkindi Legal Assistance which will be signed by the MINIJUST and the Bar Association and the defense counsel shall be co-signees to the contract as well. This contract shall provides for revision after 3 months of its implementation.
- ❖ Concerning the nomination of investigators, this will be an issue of a court which may decide on their necessity or not.
- ❖ For the next transfer cases, the nomination of the defense counsel shall respect the provisions of the judicare contract signed on 03/08/2012 between the MoJ and KBA.
- ❖ The defense counsel for Uwinkindi is not obliged to respect the aforementioned agreed upon resolutions, but if it rejects them, the paying entity shall require for other lawyers fulfilling the requirements and who will accept the established package above.

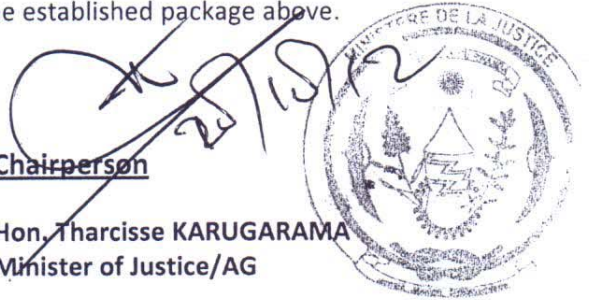

Done at Kigali on 08th October 2012

Secretary

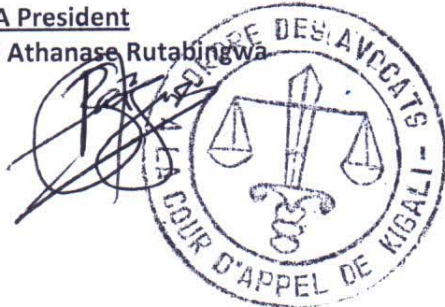
Victor MUGABE
ES/KBA


Chairperson

Hon. Tharcisse KARUGARAMA
Minister of Justice/AG



KBA President

Me Athanase Rutabingwa



MINIJUST Chief Budget Manager

Mr. Pascal B. RUGANINTWALI



REPUBLICQUE DU RWANDA

Kigali, 02 DEC 2014.....
N° 208/68/CS MOK/LSD

MINISTRE DE LA JUSTICE
B.P 160 KIGALI
Tel: (250) 252586561 Fax: (250) 252586509
E-mail : mjust@min.just.gov.rw

Me NIYIBIZI Jean Baptiste
Avocat au Barreau du Rwanda
Kigali

Objet: Invitation à une réunion au Ministère de la Justice

Me Niyibizi,

Référence faite au contrat d'assistance et de représentation en justice vous liant au Ministère de la Justice depuis le 1^{er} novembre 2013, j'ai l'honneur de vous inviter à une réunion visant à discuter sur la révision dudit contrat conformément à son article 6 et à la politique d'aide juridique et judiciaire au Rwanda.

La réunion aura lieu au Ministère de la Justice le 4/12/2014 à 14h00.

Vous trouverez en annexe le projet de contrat révisé.

Franche collaboration.

for

KALIHANGABO Isabelle
Secrétaire Permanent/ Mandataire Générale Adjoint

CPI:

- Hon. Ministre de la Justice/ Garde des Sceaux
 - Monsieur le Bâtonnier, Barreau du Rwanda
- Kigali

Website: www.minijust.gov.rw

Nduubonye kururimintamva ntaruwo kubisobanurira :

Nduubonye ku 5/12/2014 saa 3h40 pasukur Jean Uwinkindi (Uwit)



REPUBLIQUE DU RWANDA

CONTRAT D'ASSISTANCE ET DE REPRESENTATION EN JUSTICE

ENTRE

LE MINISTERE DE LA JUSTICE

ET

LES CONSEILS DE LA DEFENSE

DE UWINKINDI Jean

CONTRAT N°

ENTRE LES SOUSSIGNES:

Le **Ministère de la Justice**, ci-après dénommé « **Le Ministère** », représenté par le Secrétaire Permanent/Mandataire Général Adjoint, d'une part ;

ET

Les Conseils de la Défense de **UWINKINDI Jean** :

1. Maître GATERA GASHABANA agissant en qualité de Conseil principal, d'autre part.
2. Maître Jean Baptiste NIYIBIZI agissant en qualité de Co-Conseil, ci-après dénommés les **CONSEILS**.

PREAMBULE

Considérant la nécessité d'une assistance en justice devant les tribunaux en faveur des prévenus poursuivis d'avoir participé à la commission du crime de Génocide contre les Tutsis et autres infractions connexes, transférés au Rwanda dans le cadre de la coopération judiciaire internationale ne disposant pas des moyens financiers pour assurer la rémunération d'un Avocat ;

Considérant la volonté du Ministère de la Justice de promouvoir l'accès à la justice pour tous ;

IL A ETE CONVENU ET ARRETE CE QUI SUIT:

Article premier: De l'objet du contrat

Le présent contrat concerne l'Assistance judiciaire au bénéfice de **Jean UWINKINDI** poursuivi pour avoir participé à la commission du crime de génocide contre les Tutsis et autres infractions connexes, transféré au Rwanda dans le cadre de la coopération judiciaire internationale et ne disposant pas des moyens financiers pour assurer la rémunération d'un Conseil.

Article 2: De la durée du Contrat

Le présent Contrat est conclu pour toute la durée de l'affaire.

Article 3: Des obligations communes réciproques

3.1 Des Conseils de la Défense

Les Conseils de la Défense s'engagent à :

- a) Assister le prévenu Jean UWINKINDI devant les juridictions rwandaises à tous les degrés et à toutes les étapes de la procédure;
- b) Rendre compte au Ministère de la Justice de tous les actes accomplis en exécution de leurs prestations respectives ;
- c) Transmettre mensuellement au Barreau et au Ministère de la justice des rapports sur l'état d'avancement du dossier jusqu'à ce qu'une décision non susceptible d'appel soit rendue.

3.2. Du Ministère de la Justice

Le Ministère de la Justice s'engage à:

- a) Assurer le suivi et l'évaluation des activités des Conseils ;
- b) Pourvoir au financement de l'aide légale ;
- c) Faciliter la communication entre les Conseils de la Défense et les instances judiciaires ;
- d) Payer les honoraires selon le calendrier de paiement tel que prescrit à l'article 4 du présent contrat.

Article 4: Des honoraires

Les Conseils de la défense, quel que soit le nombre des Avocats, reçoivent en tout des honoraires sous forme d'un forfait de quinze millions de francs rwandais (15.000.000 Frw) pour tous les degrés de juridiction, payables de la façon suivante :

- a) Trois millions cinq cent mille francs rwandais (3.500.000 Frw) à la signature du contrat ;
- b) Quatre millions de francs rwandais (4.000.000 Frw) à la présentation de la copie du jugement au premier degré ;
- c) Deux millions cinq cent mille francs rwandais (2.500.000 Frw) après l'introduction de l'appel ;
- d) Cinq millions de francs rwandais (5.000.000 Frw) à la présentation de la copie du jugement en appel.

Un autre contrat sera négocié pour toutes les autres voies de recours extraordinaires faites par le prévenu. Mais le montant des honoraires ne peut pas dépasser trois millions de francs rwandais (3.000.000 Frw).

Le montant de quinze millions de francs rwandais (15.000.000 Frw) comprend tous taxes et impôts payables au Rwanda ainsi que tous les frais de l'Avocat à l'intérieur du pays.

Si le tribunal ordonne un déplacement de l'Avocat à l'extérieur du pays, un contrat séparé sera négocié.

Tous les paiements seront effectués sur le compte n° ouvert à la Banque aux noms de

Au cas où les Conseils voudront changer de compte, ils le feront par correspondance écrite trente (30) jours calendrier avant le paiement de factures pendantes.

Article 5: De la révision du contrat

De commun accord, les parties peuvent, si besoin en est, réviser les termes du présent contrat. Cependant, cette révision ne pourra en aucun cas porter sur les honoraires qui resteront inchangés durant tout le terme du contrat.

Article 6: De la résiliation du contrat

Pour des motifs légitimes et surtout compte tenu de la complexité du litige, chaque partie se réserve le droit de procéder à sa résiliation unilatérale du contrat, moyennant un préavis de trois (3) mois.

Le Ministère se réserve le droit de résilier le contrat moyennant un préavis de trente (30) jours dans les cas suivants:

- a) si les Conseils violent les règles d'éthique du Barreau;
- b) en cas de fraude ou corruption ;
- c) si le Conseil commet un acte quelconque engageant sa responsabilité pénale ;
- d) si le Conseil se conduit de façon inappropriée au tribunal ou use de manières dilatoires pour faire trainer ou empêcher le procès de se tenir normalement ;
- e) si le Conseil tient des propos de nature à discréditer le Gouvernement ou le Ministère dans le cadre de ses prestations, tant dans la presse que durant le procès.

Sans préjudice de l'alinéa premier du présent article, est considéré notamment comme cause de résiliation du présent contrat, le non respect par le prévenu, des instructions du Ministre de la Justice annexées au présent contrat.

Lorsque le contrat est résilié, les Conseils sont tenus de remettre toutes les pièces du dossier aux confrères qui succèdent dans la même affaire et un décompte final sera effectué pour le remboursement ou le paiement des honoraires dus par l'une ou l'autre partie. L'Avocat entrant doit toucher les honoraires restant pour le dossier.

Articles 7: Adresse et communication

Toute communication d'une partie à l'autre en vertu du présent contrat est adressée par écrit à l'adresse suivante :

Le Secrétaire Permanent /Mandataire Général Adjoint
Ministère de la Justice
B.P 160
Kigali, RWANDA.

Les Conseils de Jean UWINKINDI:

Maître GATERA GASHABANA.....

Maître Jean Baptiste NIYIBIZI.....

Articles 8: Loi régissant le contrat

Le présent Contrat est régi et interprété selon les lois du Rwanda.

Articles 9: Du Règlement de différends

En cas de contestation relative à l'interprétation ou à l'exécution du présent contrat, les parties privilégient un règlement à l'amiable. En cas d'échec, l'affaire est soumise devant les juridictions nationales compétentes.

Articles 10: De l'Entrée en vigueur

Le présent contrat prend effet à compter du

Pour le Ministère de la Justice

Les Conseils de la défense

KALIHANGABO Isabelle
Secrétaire Permanent/ Mandataire Général
Adjoint

1. Maître GATERA GASHABANA
2. Maître Jean Baptiste NIYIBIZI

MAITRE GATERA GASHABANA
MAITRE NIYIBIZI JEAN BAPTISTE
AVOCATS

30/12/2014
 85.15.

Kigali kuwa 28-12-2014

Nyakubahwa President
 W'Inteko mu rubanza
 RP0002/12/HCCI/Kigali

Impamvu: Gusaba isubukwa ry'iburanisha mu rubanza

RP0002/12/HCCI

ONPJ contre Jean Uwinkindi rwo kuwa 30/12/2014

Nyakubahwa President,

Tunejewe no kubandikira dusaba Inteko iburanisha urubanza rwa vuzwe haruguru mu yoboye ko yasubika iburanisha ryarwo riteganijwe kuwa 30/12/2014.

Impamvu dusaba isubikwa ry'urwo rubanza ni uko Ministeri y'Ubatabera yasheshe amasezerano y'ubwuganizi twari dufufitanye nayo hamwe n'Urugaga (Murabisangaku mugereka).

Mu gihe tutarahererekanya ibigize dosiye n'abazadusimbura, tukaba dushobora gukora gusa imirimo yihutirwa ariko tukaba tutakwinjira mu mizi y'urubanza, turasaba isubikwa ry'ubanza mu rwigo rwimishikirano duteganya na bayobozi bu Rugaga badushizeho no gutegura uwo twu ganira.

Tubaye tubashimiye uburyo mu zabyakira, kandi tubivuriza Noel nziza n'Umwaka mushya muhire wa 2015.

Mu izina rya Uwinkindi Jean

Abamwuganira:

Maitre GATERA GASHABANA

Maitre NIYIBIZI JEAN BAPTISTE

Bimenyeshezwe:

Nyakubahwa Umushinje cyaha Mukuru

Umukuru W'Urugaga rw'Abavoka



REPUBLICQUE DU RWANDA

Kigali, 22 DEC 2014
N° 2125/08/D.....MOK/LSD

MINISTRE DE LA JUSTICE
B.P 160 KIGALI
Tel: (250) 252586561 Fax: (250) 252586509
E-mail : mjust@minijust.gov.rw

Me GATERA GASHABANA
Avocat au Barreau du Rwanda
KIGALI

Objet: Résiliation du contrat avec préavis

Me GATERA,

Référence faite au contrat d'assistance et de représentation en justice du 1^{er} Novembre 2013 signé entre le Ministère de la Justice et les conseils du prévenu UWINKINDI Jean à savoir Me NIYIBIZI Jean Baptiste et vous-même, et à la rencontre du 04 Décembre 2014 où le Ministère de la Justice vous a proposé un nouveau contrat en remplacement de ce dernier et expliqué les raisons, ainsi qu'à votre lettre du 08 Décembre 2014 où vous présentez vos avis et observations sur ce nouveau projet de contrat et refusez d'accepter le changement du contrat en vigueur ;

Faute d'entente à ce sujet malgré les explications claires données lors de la rencontre susdite quant aux raisons de cette proposition à savoir notamment la nécessité de rapprochement du contrat relatif à la politique d'aide légale existante, celle d'harmonisation des contrats d'aide légale notamment pour des cas similaires ainsi que du respect du principe de l'égalité de traitement par constitution d'un contrat modèle plus ou moins stable;

J'ai le regret de vous informer que votre contrat est résilié avec un préavis de trois mois tel que prévus en son article 7, lesquels mois seront comptés à partir de la réception de la

présente. Pendant cette durée de préavis, vous continuerez bien entendu à assister et représenter dument le bénéficiaire et pourrez réclamer les honoraires y relatifs.



KALIHANGABO Isabelle
Secrétaire Permanent/Mandataire Général Adjoint

CPI :

- Excellence Monsieur le Président de la cour suprême
- Monsieur le Ministre de la Justice/ Garde des Sceaux
- Monsieur le Procureur General de la République
- Monsieur le Président de la Haute cour
- Monsieur le Bâtonnier, Barreau du Rwanda

KIGALI

MAITRE GATERA GASHABANA

TEL: 0788303744

BARREAU DE KIGALI
Maitre GATERA GASHABANA
Avocat
B.P. 4676 Kigali
Mob: 0788300044 / 0728300044
E-mail: kevinc57@yahoo.fr

ORDRE DES AVOCATS
POUR RECEPTION

Date : 08/12/2014

Signature : [Signature]

MAITRE NIYIBIZI JEAN BAPTISTE

TEL: 0788502007

AVOCATS

Pour Réception - MINIJUST
Date: 09 DEC 2014 [Signature]

Kigali, le 08/12/2014

Madame la Secrétaire Permanent/Mandataire

Générale Adjoint

KIGALI

Objet: Avis et observations sur le Projet

de contrat entre le MINIJUST et les Conseils de la Défense de
Uwinkindi Jean

Madame la Secrétaire Permanente .

Nous nous référons à notre rencontre du 04 Décembre 2014 ainsi qu'au projet du contrat, que vous nous avez transmis pour vous faire part des observations et commentaires y relatifs :

D'entrée de jeu, nous vous signalons, que le même projet nous avait été transmis pour examen en date du 1er Novembre 2013. Nous avons en son temps considéré que le contenu dudit projet violait manifestement l'esprit et la lettre de l'Arrêt rendu par la Chambre d'appel près le Tribunal Pénal International pour le Rwanda ordonnant le transfert de l'Accusé UWINKINDI Jean devant les juridictions rwandaises

[Signature]

Bien plus, les montants retenus à l'article 4 dudit contrat sont bien en de ca des normes standards minima requis pour assurer la defense des Accusés devant les juridictions Internationales

Enfin en date du 1er Novembre 2013 vous nous aviez fait tenir un projet de contrat reprenant les mêmes clauses que celui ci, lequel avait été révoqué de commun accord raison pour laquelle nous nous étions convenus de conclure un nouveau contrat qui est en vigueur jusqu'à ce jour.

Notre position demeure inchangée et ne saurait dès lors être révoquée

A toutes fins utiles nous vous faisons tenir en annexe nos humbles avis et observations y relatifs et vous en souhaitons bonnes reception

Vos biens dévoués

Maître Gatera Gashabana



Maître NIYIBIZI Jean Baptiste

C.P.I:

- Monsieur le Ministre de la justice
- Monsieur le Batonnier de l'Ordre des Avocats du Rwanda
- Monsieur le Président du Siège dans

RP0002/12/HCCI: ONPJ C/UWINKINDI JEAN

Avis et Observations sur le Projet de contrat d'Assistance et Représentation en Justice

1. Le Barreau du Rwanda ayant l'aide légale dans ses prérogatives devrait être partie dans ce contrat. En effet parmi les obligations légales qui lui incombent figurent l'assistance judiciaire aux personnes démunies (Art.59 de la loi no 83/2013 du 11 Septembre 2013 portant creation de l'Ordre des Avocats au Rwanda et déterminant son organisation et son fonctionnement).
2. Bien plus au terme de l'Amicus Curiae signé par le Barreau de Kigali représenté par le Batonnier en date du 23 Janvier 2012 dans l'Affaire: le Procureur c/Uwinkindi Jean, case no TPIR-2005-89-R11 bis, spécialement en son paragraphe 25 (page 9), il est expressément stipulé que le fonds d'aide légale du Barreau de Kigali est alimenté essentiellement par les subsides du Gouvernement.
3. Dans son Affidavit signé dans l'affaire Munyagishari le 15/2/2011, le Ministre de la Justice a réaffirmé que son Ministère apporte son appui au programme d'aide judiciaire du Barreau aux accusés indigents dont les affaires sont renvoyées au Rwanda.
4. Aux termes de la Décision dans l'affaire no ICTR-2005-89-R 11 bis (par.141) du 6 Juin 2012 en cause: le Procureur c/ Uwinkindi Jean, la Chambre de 1ère Instance du TPIR a décidé du renvoi sur base des allégations soutenues par le Procureur et le Barreau de Kigali qui ont affirmé que le droit à la représentation juridique est prévu dans la législation rwandaise et garanti par un système d'aide judiciaire dont le financement est suffisamment assuré.
5. S'appuyant sur les arguments précités, les juges du TPIR ont estimé que les assertions factuelles de la Défense ne réfutent pas les déclarations écrites sous serment du Ministre de la justice et du Secrétaire Général de la Cour Suprême et ont considéré que l'assurance que des fonds suffisants seront alloués a été donnée de bonne foi. (par .153 de l'affaire cite ci-haut).
6. Les Juges du TPIR ont également réaffirmé le droit fondamental à la Défense en ces termes: «... s'il est fait entrave au travail de l'équipe de Défense de Uwinkindi Jean, de sorte qu'elle ne soit pas en mesure d'assurer efficacement la Défense de l'intéressé, l'ordonnance de renvoi sera annulée conformément à l'article 11 bis du Règlement» (par.170 de l'affaire dont references ci-avant).

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7. Il en découle que les contributions financières du Gouvernement en faveur de l'Ordre des Avocats dans le domaine d'aide légale doivent transiter par les comptes du Barreau et non des Avocats raison pour laquelle le Barreau devrait être partie dans la procédure de conclusion du nouveau contrat.
8. S'agissant plus particulièrement de l'aide légale, la décision de la Chambre d'appel du TPIR dans l'affaire précitée (par.84) est on ne peut plus Claire: «.... si le Rwanda venait à ne pas allouer suffisamment de fonds, portant atteinte au droit de l'Accusé à un procès équitable, l'ordonnance de renvoi serait annulée».
9. Le projet de contrat qui a été soumis à notre appréciation renferme des ambiguïtés sur le nombre des Avocats à désigner dans un procès à caractère International: le Conseil Principal et le Co-Conseil. Ainsi, l'article 3.1. fait état des Conseils de la Défense, tandis que les places réservés aux parties et les signataires au contrat laissent apparaître la présence d'un seul Avocat. Dès lors, la question se pose de savoir comment un Avocat peut-il engager la responsabilité des autres? (art 64 de la loi no 45/2011 du 25/11/2011 régissant les contrats).
10. Le montant des honoraires de 15.000.000frw prévus pour toutes les procédures judiciaires à l'article 4 de ce projet de convention avait été rejeté par les parties y compris même le Ministère de la Justice. Pourquoi aujourd'hui revenir sur ce montant dont la modicité et le caractère dérisoire ne sont plus à démontrer.

1° La durée moyenne des procédures judiciaires dans les procès à caractère international est de 5ans.

Dans cette hypothèse, les 2 Avocats désignés: le Conseil Principal et le Co-Conseil auraient presté leurs services dans le passif de gestion de leurs cabinets respectifs avec pour grave conséquence de tomber en déconfiture.

En effet, les honoraires mensuels attribués à chacun d'eux seraient

De 15.000.000frw =125.000frw

2x12x5

Le montant ainsi évalué ne saurait couvrir les dépenses de fonctionnement mensuel d'un cabinet d'Avocat.

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2° L'hypothèse des procédures d'aveux et plaidoyer de culpabilité n'a pas été envisagée par le MINIJUST qui pourrait débloquer le même montant de 15.000.000frw aux Avocats qui auraient presté leurs offices pendant un délai ne dépassant pas 1 mois

3° Il existe cependant des references dignes de foi pour ne pas se tromper notamment:

- Le T.P.I.R et le Mécanisme ont prévu dans leurs barèmes des honoraries d'Avocats de 80 à 110\$ US nets par heure de service presté par un Conseil (cfr document annexé pp 14-15). Tous les frais et débours restent à la charge de ces Institutions.
- Le Barème de la C.P.I prévoit également en faveur de chaque Avocat des honoraires de l'ordre de 80 à 100\$ US nets par heure. Aussi faut-il souligner que tous les frais exposés par les Avocats dans le cadre de leurs prestations sont entièrement supports par la CPI.
- Dans le dossier connexe RP0002/12/HCCI, en cause: ONPJ C/ Jean UWINKINDI; un contrat d'Assistance et de Représentation en justice signé le 1er Novembre 2013 prévoit en son article 4, des honoraries de 1.000.000frw nets par mois et par Avocat.
- Le nouveau Barème de l'Ordre des Avocats a fixé le taux horaire entre 150.000frw et 300.000frws bruts par heure de service d'un Avocat; avec possibilité de majoration de 30% dans les affaires aussi complexe que le genocide (Arts 35 et 36).

11. Fort de ces données pratiques et de references fiables; conscient aussi des réalités économiques de notre pays; Il nous revient avec toute la modestie qui s'impose de vous proposer l'application rigoureuse des règles qui nous gouvernent tel le Barème de l'Ordre des Avocats en ce qui concerne le taux horaire ou, de faire usage du precedent dans l'affaire MP C/Jean Uwinkindi.

12. Le projet de contrat stipule en son article 4 al.3 que le montant de 15.000.000frw comprend notamment tous les frais de l'Avocat à l'intérieur du pays. Cette disposition n'est pas explicite sur les frais d'enquête à l'intérieur du pays.

Comment peut on fixer à priori le montant des frais d'enquêtes qui ne sont pas programmées, localisées et spécifiées?

13. Les déplacements à l'intérieur du pays ne sauraient être effectués aux memes endroits et pour les memes durées dans les dossiers different

14. En consequence, les coûts des enquêtes à l'intérieur du pays doivent varier d'un dossier à l'autre.

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15. Les enquêtes à décharge devant être menées à l'intérieur et à l'extérieur du pays doivent aussi trouver un financement à la hauteur de ces tâches. Aussi, faut-il souligner que tous les témoins potentiels de Monsieur Uwinkindi Jean resident à.....(cfr par.153 de la Décision du 6 Juin 2012, Affaire no TPIR-2005-89-R11,bis précitée)
16. En matière d'enquêtes, il importe de relever à titre illustrative que le T.P.I.R et le Mécanisme réservent une enveloppe de 100.000\$ US nets à titre d'honoraires d'Avocats sans compter les frais de transport et d'hébergement.(Cfr document annexé p.11)
17. A notre humble avis, les frais d'enquêtes devraient être débloqués conformément au barème Officiel applicable dans l'Administration Rwandaise. Cela montre à quel point la Défense ne voudrait aucunement faire de la surenchère dans ses prétentions.
18. Pour clore le chapitre des honoraires, il convient de souligner que leur versement doit se faire sur le fonds d'aide judiciaire géré par l'Ordre des Avocats ou sur le compte du Barreau à charge pour lui de les remettre à qui de droit (voir aussi les points 1-4 de la présente).
19. L'article 3, 1b renferme des termes susceptibles d'entamer l'indépendance de la profession d'Avocat garantie par l'article 48 al 1er de la loi no83/2013 du 11 Septembre 2013 portant création de l'Ordre des Avocats et déterminant son organisation et son fonctionnement et, de ce fait, inopportuns.
- Le contenu de cette disposition est par ailleurs repris en termes logiques au point C du même article.
20. L'article 3,2 de ce projet de contrat tend à accorder au Ministère de la Justice les compétences d'assurer le suivi et l'évaluation des activités des Avocats légalement dévolues au Barreau du Rwanda (Article 59 de la loi sur le Barreau précitée) et doit ipso facto être supprimé.
21. L'article 6 al 2 du même projet de contrat contient des points pour le moins obscurs et qui se portent en violation flagrante du principe sacro-saint de l'indépendance des Avocats (art 48 al 1er de la loi sur le Barreau précité), des principes constitutionnels de la présomption d'innocence (art 19) et de la liberté fondamentale d'expression (art 34) et méritent par voie de conséquence d'être annulés.

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22. Enfin nous considérons que le projet qui nous a été propose ne rencontre pas les preoccupations des Conseils de la Défense tel qu'il en avait été fait état lors de notre rencontre du 4 Décembre 2014

Nous restons à votre entière disposition pour les renseignements complémentaires que vous jugerez utile de nous demander et vous remercions de l'attention qu'il vous plaira d'accorder à la présente

Fait à Kigali, le 08/12/2014

Maître Gatera Gashabana

Maître Niyibizi Jean Baptiste

